

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PAUL O. PARADIS et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

ANTWON JONES et al.,

Real Parties in Interest.

B298836

(Super. Ct. No. BC574690)

ORIGINAL PROCEEDING; mandate petition. Elihu
M. Berle, Judge. Petition granted.

Scheper Kim & Harris, David C. Scheper, Angela M.
Machala, Aaron C. O'Dell, and Jeffrey L. Steinfeld for
Petitioners.

No appearance for Respondent.

Kabateck, Brian S. Kabateck, Anastasia K. Mazzella;
Isaacs Friedberg, Jeffrey B. Isaacs, Paige Shen, Stacey Zill,
for Real Party in Interest Antwon Jones.

Gibson, Dunn & Crutcher, Daniel J. Thomasch, Lauren
J. Elliot, Maurice Suh, and Casey J. McCracken for Real
Parties in Interest Pricewaterhouse Coopers, LLP and
James Curtin.

In this writ proceeding, we are presented with a narrow question of law concerning the attorney work product privilege as codified in Code of Civil Procedure section 2018.030.¹ Specifically, we consider whether former counsel waived an objection to the production of certain documents based on the attorney work product privilege by failing to provide, by declaration or other admissible evidence, sufficient grounds to establish the privilege. We conclude that, under the particular circumstances of this case, the respondent court was required to afford former counsel an opportunity to provide a more detailed privilege log or other admissible evidence to support the privilege.

¹ All further statutory references are to the Code of Civil Procedure.

RELEVANT BACKGROUND

At a status conference, real party in interest Antwon Jones stated his intention to waive the attorney-client privilege pertaining to any and all confidential communications between himself and his former attorneys and their respective law firms, including petitioners Paul O. Paradis and Paradis Law Group, PLLC (collectively, Paradis), and to produce those communications to the other parties in this action. Paradis indicated that he would like to review the subject documents and communications before they were produced to the court or any other parties to assess whether he intended to object to the disclosure on work product grounds. To resolve the dispute over production, the respondent court ordered Jones to provide to Paradis all confidential communications and documents for which he intended to waive the attorney-client privilege and produce. However, the court also ordered that Paradis would have 24 hours from the notice of entry of the order to inform Jones' counsel whether he would object to the production of the subject documents under the attorney work product doctrine. Upon timely notice of his intent to raise an objection, Paradis would have three court days to file an ex parte application with the court. If Paradis timely notified Jones that he intended to file an ex parte application, Jones' confidential communications and documents would not be

produced to the court or any requesting party until and unless the court made an order allowing the production.

After Jones notified Paradis of the documents he intended to produce, Paradis timely objected to the proposed production and filed an ex parte application for protective order. Paradis' counsel filed a declaration stating that "[a]ttached . . . is [Paradis'] Privilege Log. The Privilege Log identifies the documents in Mr. Jones' proposed production that [Paradis] object[s] to the production of and assert[s] attorney work product protection over." Counsel further stated, "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." The attached privilege log listed 21 documents; identifying each document by type, date and time sent, sender, recipient, description, and privilege asserted. Real parties in interest Pricewaterhouse Coopers, LLP and James Curtin (PWC) filed an opposition, and Jones also filed an opposition. Paradis subsequently filed a request for a hearing and time to file a reply brief in support of the ex parte application.

By way of minute order, the respondent court denied the ex parte application on June 24, 2019. The court found the application was not supported by any declaration or other admissible evidence establishing the attorney work product privilege. In addition, the court found to the extent that Paradis was representing adverse parties concurrently, the delivery of any of the referenced documents to any of the simultaneously represented clients constituted a waiver of any attorney work product privilege. Lastly, the court found

to the extent the documents subject to the ex parte application do not contain “an attorney’s impressions, conclusions, opinions, or legal research or theories” (none of which has been supported by the ex parte application), under the particular facts of this case, “denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.” The court denied Paradis’ request for a hearing and time to file a reply brief.

Paradis filed an ex parte application for a temporary stay of the respondent court’s June 24, 2019 order pending the filing of a petition for writ of mandate. The respondent court granted the application, in part, to stay execution of the court’s order until 5:00 p.m. on July 10, 2019.

On July 3, 2019, Paradis filed a petition for writ of mandate in this court, challenging the respondent court’s June 24, 2019 order. This court granted Paradis’ request for an immediate stay of the respondent court’s order. Both PWC and Jones filed preliminary oppositions pursuant to this court’s invitation.

On July 22, 2019, this court issued a notice, pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180 (*Palma*), indicating that we believe Paradis is entitled to relief and notifying the respondent court that it could avoid issuance of a preemptory writ by vacating the June 24, 2019 order denying the ex parte application, and entering a new and different order directing Paradis to file a more detailed privilege log, or if necessary, review the

disputed documents in camera to determine the applicability of the attorney work product privilege.² The respondent court elected not to comply with the *Palma* notice.

DISCUSSION

The attorney work product doctrine provides two levels of protection for attorney work product: absolute protection and qualified protection. “A writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.” (§ 2018.030, subd. (a).) “The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.” (*Id.* at subd. (b).) “The attorney is the holder of this privilege.” (*Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 911; see also *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 65–66 [attorney’s work-product privilege was not waived by attorney’s disclosure of his file to his client].) It is the burden of the

² In the writ petition, Paradis requests that the respondent court review the challenged documents in camera to determine the applicability of the attorney work product privilege. (§ 2018.060; *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703; *State Comp. Ins. Fund v. Superior Court* (2001) 91 Cal.App.4th 1080, 1091–1092.)

party asserting the work product privilege to prove that the material in question is work product and therefore privileged. (*Citizens for Ceres, supra*, at p. 911; *Bank of America, N.A. v. Superior Court* (2013) 212 Cal.App.4th 1076, 1099.)

Here, Paradis filed a privilege log in support of the ex parte application for protective order. ““The purpose of a ‘privilege log’ is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production. [Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.” [Citation.]” (*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1125.) “[A] privilege log typically should provide the identity and capacity of all individuals who authored, sent, or received each allegedly privileged document, the document’s date, a brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and the precise privilege or protect asserted.” (*Id.* at p. 1130.) A privilege log need not be verified. (*Bank of America, N.A. v. Superior Court, supra*, 212 Cal.App.4th at p. 1101.)

A trial court lacks authority to order an objection based on the attorney work product privilege waived when a responding party “serves a privilege log that fails either to adequately identify the documents to which the objection purportedly applies or provide sufficient factual information

. . . to evaluate the objection.” (*Catalina Island Yacht Club v. Superior Court, supra*, 242 Cal.App.4th at p. 1126.) “If . . . [a] privilege log fail[s] to provide sufficient information to allow the trial court to rule on the merits,” the proper remedy is to order the party to provide “a supplemental privilege log that adequately identifies each document the responding party claims is privileged and the factual basis for the privilege claim.” (*Id.* at p. 1127.) Only when the “privilege log provide[s] sufficient information to permit the court to determine whether the asserted privilege protects specific documents from disclosure, the court may rule on the merits of the objection by either sustaining it or overruling it as to each document.” (*Ibid.*) “[T]he court may not impose a waiver of the . . . work product doctrine as a sanction for failing to provide an adequate . . . privilege log.” (*Ibid.*)

The respondent court denied Paradis’ ex parte application for failing to provide sufficient admissible evidence to substantiate the attorney work product privilege. Although the respondent court was correct in finding the declaration and privilege log submitted did not adequately support the claimed attorney work product privilege, the court abused its discretion in failing to afford Paradis an opportunity to provide a more detailed privilege log or other admissible evidence to support the privilege. (See *Catalina Island Yacht Club v. Superior Court, supra*, 242 Cal.App.4th at p. 1127.)

DISPOSITION

Let a peremptory writ of mandate issue directing the respondent court to vacate the June 24, 2019 order denying the ex parte application, and enter a new and different order directing Paradis to file a more detailed privilege log, or if necessary, review the disputed documents in camera to determine the applicability of the attorney work product privilege, within seven calendar days after issuance of the remittitur. In the interest of justice and to prevent frustration of the relief granted, this decision shall be immediately final as to this court. (Cal Rule of Court, rule 8.264(b).) The stay issued by this court is lifted.

MOOR, J.

We concur:

RUBIN, P. J.

KIM, J.